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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

In re FINISAR CORP. DERIVATIVE  
LITIGATION

) Master File No. C-06-07660-RMW  
)  
) STIPULATION AND [] ORDER  
) REGARDING SUBSTITUTION OF THE  
) MITCHELL FAMILY REVOCABLE TRUST

\_\_\_\_\_  
This Document Relates To:

ALL ACTIONS.

1 Plaintiffs, Finisar and defendants hereby submit this Stipulation and [Proposed] Order  
2 Regarding Substitution of the Mitchell Family Revocable Trust, in order to memorialize their  
3 agreement and obtain the Court's approval of the parties' agreement as set forth herein.

4 WHEREAS, on May 21, 2008, plaintiffs filed the operative complaint in this matter, the  
5 Supplemental Second Amended Consolidated Verified Shareholder Derivative Complaint (the  
6 "SSAC") (Dkt. No. 63-1);

7 WHEREAS, the SSAC named Larry Mitchell, a former member of Finisar's Board of  
8 Directors, as a defendant;

9 WHEREAS, Mr. Mitchell passed away during the course of this litigation;

10 WHEREAS, the date for filing a motion for substitution with respect to the claims against  
11 Mr. Mitchell has not passed;

12 WHEREAS, plaintiffs do not believe that pursuing claims against Mr. Mitchell's estate is in  
13 the best interests of any of the parties to the action;

14 WHEREAS, certain defendants have contended that plaintiffs must prove that a demand on  
15 Finisar's Board of Directors at the time this litigation was commenced would have been futile in  
16 order to prevail on the claims asserted in this action;

17 WHEREAS, Mr. Mitchell was a member of Finisar's Board of Directors at the time this  
18 action was commenced;

19 WHEREAS, defendants and Finisar have agreed that they will never contend that plaintiffs'  
20 decision to forego any potential claims against Mr. Mitchell's estate is in any way relevant to a  
21 determination regarding whether a demand on Mr. Mitchell or Finisar's Board of Directors would  
22 have been futile at the time that the SSAC was filed.

23 THEREFORE, the parties agree, subject to this Court's approval, as follows:

24 1. Plaintiffs will not move to substitute any party with respect to the claims asserted in  
25 the SSAC against Mr. Mitchell;

26 2. None of the parties will contend that plaintiffs' decision to forego any potential  
27 claims against Mr. Mitchell's estate is in any way relevant to a determination regarding whether a  
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1 demand on Mr. Mitchell or Finisar's Board of Directors would have been futile at the time that the  
2 SSAC was filed;

3 3. Except as provided in the foregoing paragraph 2, nothing in this stipulation shall limit  
4 or prejudice any arguments, claims or defenses of defendants that a demand on Mr. Mitchell or  
5 Finisar's Board of Directors would not have been futile at the time that the SSAC was filed; and

6 4. Nothing in this stipulation shall limit or prejudice any argument or claim that  
7 plaintiffs need not prove that a demand on Finisar's Board of Directors at the time this litigation was  
8 commenced would have been futile in order to prevail on the claims asserted in this action.

9 IT IS SO STIPULATED.

10 DATED: August 13, 2012

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I, Christopher M. Wood, am the ECF User whose identification and password are being used to file the Stipulation and [Proposed] Order Regarding Substitution of the Mitchell Family Revocable Trust. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that Sarah A. Good, David A. Priebe, Lloyd Winawer and Jared L. Kopel have concurred in this filing.

s/ Christopher M. Wood  
CHRISTOPHER M. WOOD

\* \* \*

**ORDER**

Having considered the parties' Stipulation, and good cause appearing, the Court hereby GRANTS the parties' Stipulation.

IT IS SO ORDERED.

Dated: JÐ, 2012

  
THE HONORABLE RONALD M. WHYTE  
UNITED STATES DISTRICT JUDGE